IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 9903 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KANBI NAGJIBHAI MOHANBHAI - Petitioner(s)
Versus
ASSISTANT COLLECTOR & 1 - Respondent(s)

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Appearance :
MR BIREN A VAISHNAV for Petitioner(s) : 1,
MR AY KOGJE, ASSTT.GOVERNMENT PLEADER for Respondent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 14/03/2007

ORAL JUDGMENT

1. Shri Biren A. Vaishnav, learned counsel for the petitioner; Shri A.Y. Kogje, learned AGP for the respondents.

2. The petitioner being aggrieved by the order dated 22nd May, 1990 passed in Tenancy Case No. 5/88 by the learned Additional Collector, Tharad is before this Court.

3. The petitioner is owner of land survey no. 138. Talati cum Mantri submitted a report to the Additional Collector that the land remained uncultivated for a period of more than two years, therefore, appropriate action under Section 65 of the Bombay Tenancy & Agricultural Lands Act, 1948 be taken. The Additional Collector issued notice to the petitioner to show cause that why appropriate action be not taken against him and property be not taken in the management of the government. The petitioner filed his reply and submitted that because of drought condition and as the land was on high altitude, he could not cultivate the land and the conditions were beyond his control. Learned Additional Collector, relying upon the report submitted by Talati cum Mantri held that for the years 1985-86 and 1986-87, no agricultural operations were carried on in the land and the

land remained uncultivated. He accordingly directed that the land be taken in the management of the government. Being aggrieved by the said order, the petitioner preferred a revision application before the Revenue Tribunal, but the said Revision Application No. TEN.B.A. 567/90 came to be dismissed on 5.1.95 on the ground that the Tribunal had no jurisdiction to entertain the said revision application. In view of the said order passed by the Tribunal, the petitioner is before this Court.

4. Shri Vaishnav, learned counsel for the petitioner submitted that along with the writ application, the petitioner has filed copy of the declaration cum notification issued by the Collector which is countersigned by the Mamlatdar, Tharad, wherein, the officers have directed that recovery of the revenue shall remain deferred, according to him, such orders are passed by the officers and the authorities in view of the drought condition of if the cultivation is not possible for any other

reason. He submits that this order cum notification could not be produced before the Additional Collector, but the fact remains that such an order granting deferment was in existence on the date when the order against the interest of the petitioner was made. Shri Kogje, learned AGP for the respondents submits that if the petitioner did not file necessary documents, then, at this stage, the petitioner cannot be allowed to fill up the lacuna, he prays for dismissal of the writ application.

5. After hearing the parties and after going through the Annexure:A, I am of the opinion that the petitioner must get one chance to convince the Additional Collector that in view of the drought conditions, the State Government, through the Collector/Mamlatdar had issued an order directing deferment of recovery of the revenue and such order would clearly prove the case of the petitioner that because of the drought conditions, he could not cultivate the land.

6. The order dated 22nd May, 1990 passed by the

Additional Collector, Tharad in Tenancy Case No. 5/88 is hereby quashed and the matter is remanded back to the said Additional Collector for redeciding the matter after giving appropriate opportunity to the petitioner to lead evidence in support of his case. The parties present in the Court shall appear before the Additional Collector on 24th April, 2007 with a copy of this order enabling the Additional Collector to know that what he is required to do. The petition is disposed of accordingly. Rule is made absolute accordingly. No costs.

[R.S. GARG, J.]

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